

**QUINN EMANUEL URQUHART & SULLIVAN, LLP**

Susheel Kirpalani  
Robert S. Loigman  
Rex Lee  
Lindsay M. Weber  
51 Madison Avenue, 22nd Floor  
New York, New York 10010  
Telephone: (212) 849-7000  
Telecopier: (212) 849-7100

*Counsel to Joint Liquidators of Kingate Global Fund Ltd. and Kingate Euro Fund Ltd.*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

FEDERICO CERETTI, *et al.*

Defendants.

No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 09-1161 (SMB)

**NOTICE OF MOTION FOR LEAVE TO APPEAL THE AUGUST 21, 2015 ORDER  
GRANTING IN PART AND DENYING IN PART DEFENDANTS KINGATE GLOBAL  
FUND LTD. AND KINGATE EURO FUND LTD.'S MOTION TO DISMISS THE  
FOURTH AMENDED COMPLAINT**

**PLEASE TAKE NOTICE** that upon the Notice of Appeal, dated September 4, 2015, the Declaration of Robert S. Loigman (“Loigman Decl.”), sworn to on September 4, 2015, and the exhibits attached thereto, and the accompanying Memorandum of Law in support of this motion, and all prior pleadings and proceedings herein, the Joint Liquidators for defendants Kingate Global Fund Limited (“Kingate Global”) and Kingate Euro Fund Limited (“Kingate Euro, and, together with Kingate Global, the “Kingate Funds”) by their attorneys Quinn Emanuel Urquhart & Sullivan LLP, move before the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 158(a)(1) and Federal Rules of Bankruptcy Procedure 8001(b) and 8003 for leave to appeal portions of the August 21, 2015 Order (the “Order”) (Docket No. 200 in Adv. Pro. No. 09-1161 (SMB)) of the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) denying in certain respects the Kingate Funds’ motion to dismiss claims brought by plaintiff Irving Picard, the Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC (the “Trustee”). The Order incorporates the Bankruptcy Court’s memorandum decision of August 11, 2015 (the “Decision”) (Docket No. 199 in Adv. Pro. No. 09-1161 (SMB)), which sets forth the Bankruptcy Court’s reasoning.

**PLEASE TAKE FURTHER NOTICE THAT** pursuant to Federal Rule of Bankruptcy Procedure 8004(b)(A)-(D) the facts necessary to understanding of the questions to be presented on appeal, the questions themselves, the relief sought, and the reasons why relief should be granted are set forth in the Kingate Funds’ accompanying Memorandum of Law, which is incorporated herein by reference.

**PLEASE TAKE FURTHER NOTICE THAT** pursuant to Federal Rule of Bankruptcy Procedure 8004(b)(E) the August 21, 2015 Order and the August 11, 2015 Decision are attached as Exhibits A and B, respectively, to the Loigman Decl. filed concurrently herewith.

**Statement of the Questions to be Presented on Appeal**

The Kingate Funds seek leave to appeal with respect to the following controlling questions of law:

1. Did the Bankruptcy Court err by concluding that the investment managers' knowledge should be imputed to the Kingate Funds, even if the investment managers actually knew about Madoff's fraud, where the Kingate Funds would have been victims of the managers' misconduct and would not have derived any benefit from having invested in BLMIS?
2. Did the Bankruptcy Court err by concluding that the Trustee had alleged that the Kingate Funds "had actual knowledge that there were no actual securities transactions being conducted by Madoff," as required by this Court's *Cohmad* decision to preclude the application of section 546(e) of the Bankruptcy Code?

The Kingate Funds seek reversal of the Bankruptcy Court's Order denying their motion to dismiss claims brought by the Trustee. The Kingate Funds respectfully request oral argument in connection with this motion. *See Fed. R. Bankr. P. 8004(c)(3).*

DATED: New York, New York  
September 4, 2015

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By: /s/ Robert S. Loigman  
Susheel Kirpalani  
Robert S. Loigman  
Rex Lee  
Lindsay M. Weber

51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, New York 10010-1601  
(212) 849-7000

*Counsel to Joint Liquidators of Kingate Global  
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